IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Bail Appl..No. 5079 of 2007()

CRIME NO.343 OF 2007 OF CHERTHALA POLICE STATION

PETITIONER : ACCUSED:

ABDUL BASHIR, AGED 23 YEARS,
S/O.ABDUL RASHEED, MOOZHIL HOUSE,
CHAKKAKONAM P.O., KARAKULAM.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5079 of 2007

Dated this the 23rd day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. He along with another was allegedly engaged in the activity of transporting 1225 litres of spirit in an Innova car which was taken on rent from its registered owner at Trivandrum. The vehicle allegedly did not obey the directions of the Hill Palace Police who wanted them to stop. The vehicle sped away. The information was passed on to neighbouring police stations and the vehicle was intercepted by the Cherthala police on the high way. According to the prosecution, the petitioner was driving the vehicle at the relevant time. He abandoned the vehicle and ran way. He could not be arrested. Another person available in the car was taken into custody. He was interrogated. The interrogation of the said person reveals that the petitioner was driving the car at the relevant time. The registered owner of the car was contacted. The registered owner of the car asserted that the petitioner had taken the car after surrendering the documents for identification before the owner of the car. Investigation is in progress. The crime has been registered. The petitioner is not arrayed as an accused in the present name in the F.I.R. Subsequently a report has

been filed to correctly convey name and details of the petitioner as the driver of the car who fled from the scene of detection.

2. Investigation is in progress. The petitioner apprehends imminent arrest. The learned counsel for the petitioner does not, for the moment, dispute the fact that the vehicle was taken from its registered owner by the petitioner. But according to him, he was not at the wheel at the time when the detection took place. According to him, his driver not named had taken the car without the permission of the petitioner and it was he who must have indulged in the questionable culpable conduct. In any view of the matter, the petitioner is not in any way responsible for the crime committed. The petitioner may now be granted anticipatory bail, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor submits that all available indications convincingly point to the contumacious role of the petitioner. The petitioner has to be interrogated. It will be inexpedient and improper at this stage to permit the petitioner to arm himself with an order of anticipatory bail. He has to be interrogated thoroughly and exhaustively to ascertain all the relevant details of the crime. In these circumstances, the petitioner may not be granted anticipatory bail, submits the learned Public Prosecutor .

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor . At this early stage of investigation, I shall not advert in detail to the facts in controversy. I shall not attempt to resolve such controversy. Suffice it to say that I do not find any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is an eminently fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-